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JAN 2 2 2004

JUDGE AMY ST. EVE
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 03 CR 311
v.	)	Judge Amy St. Eve
	)	
ANDREW MARTIN GUCA	)	

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, ANDREW MARTIN GUCA, and his attorney, JANIS ROBERTS, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and the defendant regarding the defendant's criminal liability in case 03 CR 311.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, ANDREW MARTIN GUCA, and his attorney, JANIS ROBERTS, have agreed upon the following:

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1. Defendant acknowledges that he has been charged in the superseding information in this case with two counts of bank robbery, in violation of Title 18, United States Code, Sections 2113(a) and (d) (Counts One and Two); and with possessing a firearm in furtherance of, and using, carrying, and brandishing that firearm during and in relation to, a crime of violence, in violation of Title 18, United States Code, Section 924(c)(1)(A)(Count Three).

2. Defendant has read the charges against him contained in the superseding information, and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to all three counts of the superseding information in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in the superseding information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Count One

On or about February 27, 2003, at Frankfort, in the Northern District of Illinois, Eastern Division, defendant did, by force and violence, and by intimidation, take from the person and presence of bank tellers at least approximately $10,500 in United States currency belonging to and in the care, custody, control, management and possession of First Midwest Bank, 7645 St. Francis Road, Frankfurt, Illinois, the deposits of which were insured by the Federal Deposit Insurance Corporation and, in committing such offense, defendant assaulted and put in jeopardy the lives of bank employees by the use of a dangerous weapon, namely, a firearm, in violation of Title 18, United States Code, Sections 2113(a) and (d).

More specifically, on or about February 27, 2003, at approximately 2:15 p.m., defendant, armed with a firearm, and wearing gloves and a ski mask, confronted "Bank Teller A" at her teller station at the aforementioned branch of First Midwest Bank. Brandishing the firearm, defendant told Bank Teller A, "This would only take two minutes, give me what you got," or words to that effect. Bank Teller A emptied her teller drawer of approximately $4,500 in United States currency belonging to the bank and placed this currency into a blue nylon bag that defendant was then holding. Defendant next confronted "Bank Teller B" at her teller station. In response to defendant's threats and demands, Bank Teller B emptied her teller drawer of approximately $6,000 in United States currency belonging to the bank and placed this currency into defendant's nylon bag.

Defendant then, while still brandishing the firearm, told both Bank Teller A and Bank Teller B to "step back," whereupon defendant ordered "Bank Teller C" to empty the contents of her teller drawer into the blue nylon bag, stating, "take everything out of the drawer," or words to that effect. Bank Teller C, in response, emptied an amount of United States currency into the bag.

Defendant took the money-filled bag and fled the bank.

Count Two

On or about March 25, 2003, at Frankfort, in the Northern District of Illinois, Eastern Division, defendant did, by force and violence, and by intimidation, take from the person and presence of bank tellers approximately $10,487 in United States currency belonging to and in the care, custody, control, management and possession of TCF Bank 505 North LaGrange Road, Frankfurt, Illinois, the deposits of which were insured by the Federal Deposit Insurance Corporation and, in committing such offense, defendant assaulted and put in jeopardy the lives of bank employees by the use of a dangerous weapon, namely, a firearm, in violation of Title 18, United States Code, Sections 2113(a) and (d).

More specifically, on or about March 25, 2003, at approximately 3:00 p.m., defendant, armed with a firearm, and wearing gloves and a ski mask, confronted "Bank Teller D" at her teller station at the aforementioned branch of TCF Bank. Defendant confronted Bank Teller D while brandishing the firearm in his hand and stated to all tellers and other bank employees present in the bank, "I want your money, all your money," or words to that effect. In response to defendant's threats and demands, tellers gave defendant approximately $10,487 in United States currency belonging to the bank. Defendant then fled the bank with this money.

Count Three

On or about March 25, 2003, at Frankfort, in the Northern District of Illinois, Eastern Division, defendant knowingly possessed a firearm in furtherance of, and used, carried, and brandished that firearm during and in relation to, a crime of violence for which he may be prosecuted in a court of the United States, namely, bank robbery, in violation of Title 18, United States Code, Sections 2113(a) and 2113 (d), as further set forth in Count Two of the superseding information, in violation of Title 18, United States Code, Section 924(c)(1)(A).

More specifically, as described above, while robbing the aforementioned branch of the TCF Bank on or about March 25, 2003, defendant openly possessed, carried, used, and brandished a firearm. The defendant did so in order to intimidate and threaten bank employees into surrendering money belonging to the bank.

6. For purposes of applying the November 2003 edition of Sentencing Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

Count One

(a) Pursuant to Guideline § 2B3.1(a), the base offense level for this robbery is level 20.

(b) Pursuant to Guideline § 2B3.1(b)(1), a 2-level increase in the offense level is appropriate because the property of a financial institution was taken.

(c) Pursuant to Guideline § 2B3.1(b)(2)(C), a 5-level increase in the offense level is appropriate because defendant brandished a firearm.

(d) Pursuant to Guideline § 2B3.1(b)(7)(B), a 1-level increase in the offense level is appropriate because the loss was more than $10,000 but less than $50,000.

Count Two

(e) Pursuant to Guideline § 2B3.1(a), the base offense level for this robbery is level 20.

(f) Pursuant to Guideline § 2B3.1(b)(1), a 2-level increase in the offense level is appropriate because the property of a financial institution was taken.

(g) Pursuant to Guideline § 2B3.1(b)(7)(B), a 1-level increase in the offense level is appropriate because the loss amount was more than $10,000.00 but less than $50,000.00.

Combined Offense Level for Counts One and Two

(h) Pursuant to Guideline § 3D1.2(d), the robberies charged in Counts One and Two are not grouped. Pursuant to Guideline § 3D1.4, the robbery charged in Count One is assigned one unit, and the robbery charged in Count Two is assigned one-half unit, resulting in 1 ½ units and a 1-level increase in the offense level for Count One from level 28 to level 29.

(i) The defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), a two-level reduction in the offense level is appropriate.

(j) The defendant has notified the government timely of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, within the meaning of Guideline § 3E1.1(b). An additional one-level reduction in the offense level is therefore appropriate, provided the Court determines the offense level to be 16 or greater prior to the operation of Guideline § 3E1.1(a).

Guideline Calculations for Count Three

(k) Pursuant to Guideline § 2K2.4(b), the guideline sentence is the minimum term of imprisonment required by Title 18, United States Code, Section 924(c)(1)(A)(ii), namely, 84 months, which must be served consecutively to the sentence imposed on the bank robbery charges.

Criminal History

(l) On or about January 7, 2002, in the Circuit Court of Cook County, Illinois, defendant was convicted of deceptive practice and sentenced to ten days community service and one year of court supervision, resulting in one criminal history point, pursuant to Guideline § 4A1.1(c).

(m) Based on the facts known to the government and set forth in subparagraph 6(l) above, the defendant's criminal history points equal one, and the defendant's criminal history category is therefore I.

(n) The defendant and his attorney and the Government acknowledge that the above calculations are preliminary in nature and are based on facts known to the Government as of the time of this Plea Agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Plea Agreement is not contingent upon the Probation Department's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the Probation Department and/or the Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Plea Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. With respect to the penalties involved in this case, defendant understands as follows:

(a) Defendant understands that Count One carries a maximum penalty of 25 years' imprisonment, a maximum fine of $250,000, any restitution ordered by the Court, and a term of supervised release of at least three years but not more than five years, which the Court may specify.

(b) Defendant understands that Count Two carries a maximum penalty of 25 years' imprisonment, a maximum fine of $250,000, any restitution ordered by the Court, and a term of supervised release of at least three years but not more than five years, which the Court may specify

(c) Defendant understands that Count Three carries a statutory minimum term of imprisonment of 84 months, which shall run consecutively to any term of imprisonment imposed on Counts One and Two, a maximum term of life imprisonment, a maximum fine of $250,000, and a term of supervised release of at least three years but not more than five years, which the Court may specify.

(d) Therefore, on the counts to which he is pleading guilty, the defendant faces a total statutory maximum penalty of life imprisonment, a maximum fine of $750,000, and a term of supervised release.

9. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed $100 on each of the charges to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of $300 at the time of sentencing with a cashier's check or money order made payable to the Clerk of the U. S. District Court.

10. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If the defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the Government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt and that it was to consider each count of the superseding information separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of the defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the Government would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those Government witnesses and his attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in his own behalf. If the witnesses for the defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, the defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If the defendant desired to do so, he could testify in his own behalf.

(f) The defendant understands that he has a right to have the charges prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, the defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

11. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. The defendant's attorney has explained those rights to him and the consequences of his waiver of those rights. Defendant further understands that he is waiving all appellate issues that might have been available if he had exercised his right to trial.

12. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

13. Defendant understands that the superseding information and this Plea Agreement are matters of public record and may be disclosed to any party.

14. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

15. At the time of sentencing, the government shall be free to recommend that the Court impose any sentence within the applicable Guideline range that the government deems appropriate.

16. After sentence has been imposed on the counts of the superseding information to which defendant will plead guilty as agreed herein, the government will move to dismiss the indictment in this case.

17. Regarding restitution, the parties agree that Counts One and Two are offenses against property, and thus an order of restitution is required pursuant to Title 18, United States Code, Section 3663A. The parties further agree that, under Title 18, United States Code, Sections 3663A and 3664(f)(1)(A), the amount of restitution owed by defendant to First Midwest Bank is at least approximately $10,500, less any funds recovered by law enforcement authorities, and that the amount of restitution owed by defendant to TCF Bank is approximately $10,487, less any funds recovered by law enforcement authorities. The defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances, including all tax returns and related information which may be requested, in order to determine the manner in which and the schedule by which restitution is to be paid. The defendant understands that he is required to notify the Court and the Attorney General of any material change in his economic circumstances that might affect his ability to pay restitution. The defendant further

understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

18. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and, subject to the limitations of the Sentencing Guidelines, may impose the maximum penalties as set forth in Paragraph 8 above. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw his guilty plea.

19. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event that he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecutions.

20. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement, to cause the defendant to plead guilty.

21. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

22. Should the judge refuse to accept the defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

23. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. The defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Plea Agreement.

AGREED this 22 day of January, 2004

for PJF
PATRICK J. FITZGERALD
United States Attorney

ANDREW MARTIN GUCA
Defendant

/by TJC
KENYANNA M. SCOTT
Assistant United States Attorney

JANIS ROBERTS
Attorney for Defendant